

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Barton et al.
Appl. No.: 10/691,806
Conf. No.: 6662
Filed: October 21, 2003
Title: APPARATUS AND METHOD FOR PROVIDING POINT OF PURCHASE
PRODUCTS
Art Unit: 3653
Examiner: J. Shapiro
Docket No.: 112703-294

Mail Stop
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

IDENTIFICATION OF RELATED APPLICATIONS AND OFFICE ACTIONS

Sir:

REMARKS

Applicants note that the above-identified patent application is a divisional of Application Serial No. 09/960,915, filed on September 21, 2001. Applicants note that the following applications either claim priority from or are related to Application Serial No. 09/960,915:

<u>Serial No.</u>	<u>Filing Date</u>
10/713,333	November 13, 2003
10/930,968	August 31, 2004
10/930,974	August 31, 2004
10/930,570	August 31, 2004
10/930,975	August 31, 2004
11/279,988	April 17, 2006
11/462,917	August 7, 2006

Applicants are also submitting herewith a copy of what Applicants believe are substantive Office Actions that have issued in these applications. These Office Actions are as follows:

<u>Serial No.</u>	<u>Office Action Date</u>
10/930,968	October 20, 2006
10/930,968	July 26, 2006
10/930,968	April 18, 2006
10/930,968	November 29, 2005
10/930,570	August 24, 2006
10/930,570	December 1, 2005


Applicants have attempted to identify each piece of prior art in the Information Disclosure Statements that have been filed in this application that were relied upon in the above-identified Office Actions. However, to the extent a piece of prior art may not have been identified in an Information Disclosure Statement, it was inadvertent. Therefore, to the extent the Patent Office determines that in any of the Office Actions, a piece of prior art has been relied

upon that has not been made of record in this patent application, Applicants respectfully request that the Patent Office consider same.

Respectfully submitted,

~~BEK~~, BOYD & LLOYD LLP

BY


Robert M. Barrett

Reg. No. 30,142

Customer No.: 29156

Dated: March 6, 2007



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/930,968	08/31/2004	Steven P. Barton	112703-340	7502

7590 10/20/2006
Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, IL 60690-1135

EXAMINER

WALSH, DANIEL I

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/930,968

Applicant(s)

BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-8-06 (RCE).
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 and 39-55 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 21-33 and 39-55 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Receipt is acknowledged of the RCE received on 8-8-06.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 21-24 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10713333.

This is a provisional obviousness-type double patenting rejection.

For example, claim 21 of the current application claims:

"...checkout...scanner...monitor...packaging area...dispenser..." (re claim 21) whereas the '333 Application teaches "checkout...scanner...video monitor... packaging area...dispenser..." (re claim 1).

Though the claims are not identical the Examiner notes that the current application is merely a broader recitation of the '333 Application, and thus obvious to one of ordinary skill in the art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 21-25 and 39-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold (US 5,978,772) in view of Nestler (US 4,645,036).

Mold teaches a scanner to scan items, a video monitor to display the cost of items, and a packaging area for placing scanned items into a container/bag (FIG. 1). The Examiner notes that such limitations are conventional in the art for a checkout register.

Mold is silent to a dispenser for storing and dispensing a point of purchase product, the dispenser including a removable container housing a stock of point of purchase products wherein the video monitor displays the cost of the product dispensed by the dispenser.

Nestler teaches a dispenser for dispensing a point of purchase product, including a removable container housing a stock of (interpreted as more than 1) of point of purchase products (FIG. 1, FIG. 2B). The container is interpreted as removable as it can be placed in an extended/removed position, as per FIG. 2B. Though silent to the video monitor displaying the cost of the product dispensed by the dispenser, the Examiner notes that it would have been obvious that such items be added to the total, and as such, the information regarding the cost of the item would be displayed so that the customer can see the item price/information, for example. The Examiner notes that Nestler teaches a display 22 for product information, but is silent to the cost being displayed. The Examiner notes that as discussed above, displaying of cost information is well known and conventional in the art to provide the user with purchase price information.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold with those of Nestler.

One would have been motivated to do this in order to have increased security for items.

Re claim 22, FIG. 2B (Nestler) teaches the product dispensed into the container. The Examiner has interpreted this container as the removable container, as two containers are disclosed in claim 1. Additionally, the Examiner notes that FIG. 2A Nestler teaches a ramp. The Examiner notes it would have been obvious that the ramp could be dispensing into a

bag/container that scanned items are placed in, if desired, so that the items drop into the bag/container for convenience.

Re claims 23-24, the Examiner notes that Nestler teaches that the dispenser dispenses items next to the cash register (FIG. 2A). This is interpreted as next to the scanner/monitor/receipt printer, etc., which are part of the cash register/checkout. One would have been motivated to dispense next to the register/register devices in order to have the item readily accessible to the clerk for convenience.

Re claim 25, Mold/Nestler are silent to the product being confectionary and the cost is added to the cost of the items automatically. The Examiner notes that it would have been obvious for the product to be a confectionary product based on the desires or type of store, and that the cost be added to the cost of the items as part of the total items being purchased, to get a complete and accurate cost. The Examiner notes that the teachings of Mold illustrate a scanner for scanning items. The Examiner has interpreted the scanning of items to automatically add products (including confectionary products) to the cost, as is conventional in the art, for convenience/speed of the checkout.

Re claim 39, the limitations have been discussed above re claim 21. The Examiner has interpreted the dispenser as capable of dispensing all available point of purchase products. Additionally, the Examiner notes that the recitation that the dispenser dispenses all products available to the consumer is sufficiently broad to include those products disclosed by the prior art.

Re claim 40, the limitations have been discussed above re claim 22.

Re claim 41, the limitations have been discussed above re claim 23.

Re claim 42, the limitations have been discussed above re claim 24.

Re claim 43, the Examiner notes that the limitation "that eliminates..." has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-container description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). The teachings of *Mold/Nestler* are interpreted to read upon the claimed structure. Additionally, the Examiner notes that it is possible that the teachings above eliminate the need for racks or planagrams for displaying point of purchase products, as the products can be stored in the compartment of *Nestler*, for example, and the structure does not preclude products being dispensed that are not displayed. One would have been motivated to dispense products not displayed, as a means to provide security, organization, or space saving, for example, through use of an overhead storage unit/dispenser.

Re claim 44, the Examiner notes that the limitation "that is not displayed in a rack..." has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-container description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). However, the Examiner notes that *Nestler* teaches products in compartments, interpreted as a body with interior, not a rack. Re the dispensing of prints not displayed, such teachings have been discussed above.

The teachings of *Mold/Nestler* have been discussed above (also see claim 26), including *Mold* teaching a scanning device to scan items for purchase, and *Nestler* teaching a body with

interior for housing a container of a point of purchase product, a prompt, and dispenser as claimed (FIG. 1+ and 24, 25). Additionally, the Examiner has interpreted that a controller is coupled to the body (see FIG. 3 of Nestler), as the Examiner has interpreted the actuators to move products as part of controlling means/controllers. Additionally, as Nestler teaches special codes or buttons of the checkout causing dispensing (col 8, lines 42+) and Mold has taught a checkout register including a scanning device, it would have been obvious for the checkout system/scanning device to communicate with and be coupled to the controller in order to process and complete transactions and dispensing of items. The items would be added together and totaled, as discussed above, and as is conventional in the art.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold with those of Nestler, for security.

Re claim 45, the limitations have been taught (see claim 27). The Examiner notes that the controller is interpreted as integral with the body as the body houses electronics, motors, and etc. that are used to dispense the items (FIG. 3+). This is interpreted as a controller integral with the body, as the controller is interpreted as the actual mechanical devices within the body that contribute to the dispensing of the product.

Re claim 46, the limitations have been taught (see claim 28). The Examiner notes that as the controller is responsive to inputs, it would have been obvious that it is coupled by one of electrical, optical, and RF, as such means (especially electrical) are well known and conventional in the art for communicating information in a transaction system reliably.

Re claim 47, the limitations have been taught (see claim 29). The Examiner notes that as the scanner is connected to the register, it would have been obvious to do so either electrically,

optical, or radio as a well-known means for device connectivity. As Mold shows a wired scanner, it would have been well within the skill in the art for such a connection to be electric for reliability.

Re claim 48, the Examiner notes that Nestler teaches such limitations (FIG. 1, 2A, 2B).

Re claim 49, the limitations have been taught (see claim 31). Re claim 31, it has been discussed above that the checkout/scanning device would be linked to the compartments to dispense items. Accordingly, as there are movers/actuators in the compartments themselves, prompted by the scanning device/checkout, it would have been obvious that the scanning device/checkout communicate with the actuators to dispense items. Therefore, it would have been obvious that such controlling means/controllers extend into the scanning device in order to communicate from the scanning device to the actual actuators/movers into the compartment when dispensing is necessary.

Re claim 50, the Examiner notes that Nestler teaches displays on panels 24 and 25 that also prompt consumers to purchase a point of purchase product.

4. Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Collins, JR. (US 5,019,694).

The teachings of Mold/Nestler have been discussed above, including the teachings of a body, container, scanning device, dispenser, and stock of confectionary products.

Re claim 26, the Examiner notes that the compartments of Nestler (FIG. 1) are interpreted as a body with an interior, and a controller is coupled to the body (see FIG. 3 of Nestler), as the Examiner has interpreted the actuators to move products as part of the controlling means/controllers. The Examiner has interpreted the checkout system of Mold as a scanning

device. Accordingly, the checkout system would obviously communicate with and be coupled to the controller in order to process and complete transactions, especially as Nestler teaches that special codes or buttons of the checkout cause the dispensing (col 8, lines 42+), which thereby would link the checkout system/scanning device to the controllers for actuation.

Mold/Nestler are silent to a touch screen prompt to encourage a consumer to purchase the point of purchase product.

Collins, Jr. teaches a video monitor (FIG. 4) generating a prompt to purchase items, interpreted as including the point of purchase product as the prompt is to encouraging purchase of all scanned items

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold/Nestler with those of Collins, Jr.

One would have been motivated to do this to provide a means for a customer to complete payment for the products while the cashier scans products, for example, to speed the checkout process.

Re claim 27, the Examiner notes that the controller is interpreted as integral with the body as the body houses electronics, motors, and etc. that are used to dispense the items (FIG. 3+). This is interpreted as a controller integral with the body, as the controller is interpreted as the actual mechanical devices within the body that contribute to the dispensing of the product. The controller in this interpretation would obviously be coupled to the checkout/scanning device as the checkout device causes the dispenser to dispense, based on inputs.

Re claim 28, the Examiner notes that as the controller is responsive to inputs, it would have been obvious that it is coupled by one of electrical, optical, and RF, as such means

(especially electrical) are well known and conventional in the art for communicating information in a transaction system reliably.

Re claim 29, the Examiner notes that as the scanner is part of the checkout system to the register, it would have been obvious to do so either electrically, optical, or radio as a well-known means for device connectivity. As Mold shows a wired scanner, it would have been well within the skill in the art for such a connection to be electric, to have a reliable connection.

Re claim 30, Nestler teaches dispensing downward (vertically) (FIG. 1+).

Re claim 31, it has been discussed above that the checkout would be linked to the compartments to dispense items. Accordingly, as there are movers/actuators in the compartments themselves, it would have been obvious that the scanning device/checkout communicate with the actuators to dispense items. Therefore, it would have been obvious that such controlling means extended into the scanning device in order to communicate from the scanning device to the actual actuators/movers into the compartment when dispensing is necessary.

Re claim 32, the limitations have been discussed above, where displaying transaction information to compel the customer to scan their credit card to complete a transaction is interpreted as prompting purchase of products, including the product.

Re claim 33, the limitations have been discussed above where the products to be dispensed are placed in a container to be later received/entered into the point of purchase device/checkout.

5. Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Collins, JR. (US 5,019,694).

The teachings of Mold/Nestler have been discussed above, including a stock of point of purchase product.

Mold/Nestler are silent to the video monitor generating a prompt to prompt a purchase of a point of purchase product.

Collins, Jr. teaches a video monitor (FIG. 4) generating a display which shows price and item information. This is interpreted as product information that is scanned or otherwise entered into the system. Accordingly, it would have been obvious to one of ordinary skill in the art that the products dispensed by Nestler would be desired to be input and displayed to the user to provide pricing/product information as well as to enter into the total amount of the transaction. Accordingly, it would have been obvious to also display the dispensed product information on the display (via scanning/keyboard input/etc. as is conventional in the art), to provide information and include the item in the transaction. The Examiner has interpreted the displaying of the as the point of purchase products (and other items) entered into the system and the subsequent acceptance of their purchase (completion of the transaction) via credit card payment for example, as prompting the purchase through the video monitor. For example, it is obvious to one of ordinary skill in the art that a typical credit card transaction involves prompting the user through a display to complete the transaction, thus prompting the user to purchase the products (including the point of purchase products).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold/Nester with those of Collins, Jr.

One would have been motivated to do this in order to provide convenience for the customer to complete the transaction.

Re claim 52, the limitations have been discussed above re claim 25, but Mold/Nestler are silent to the video monitor claimed displaying the cost of items and generating a prompt to purchase.

Collins, Jr. teaches such limitations above (displays 50,54), interpreted as displaying the costs and prompting purchase. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold/Nestler with those of Collins, Jr. for convenience of the shopper.

Re claim 53, the limitations have been discussed above re claim 26, including point of purchase products. The Examiner notes that though silent to a display for displaying the cost of the items, the Examiner notes that the displays 50/54 of Collins, Jr. display the total amount due and include lead through instructions to prompt the user to complete the transaction. It would have been obvious to display the items and prompt the user to purchase, as a means to provide guidance to a user to complete a transaction.

6. Claims 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler/Collins, Jr., as discussed above, in view of Morrison (US 6,105,866).

The teachings of Mold/Nestler/Collins, Jr. have been discussed above, including point of purchase products.

Mold/Nestler/Collins, Jr. are silent to an audio prompt to encourage purchase.

Morrison teaches such an audio prompt (col 4, lines 46+).

At the time the invention was made, one would have been motivated to combine the teachings of Mold/Nestler/Collins, Jr. with those of Morrison.

One would have been motivated to do this in order to assist sight impaired individuals, or to audibly play information selectively/or for each item for convenience of the user/verification.

7. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Morrison.

The teachings of Mold/Nestler have been discussed above, re claim 25, and point of purchase products have been discussed above.

Mold/Nestler are silent to the audible means as claimed.

Morrison teaches such limitations, as discussed above.

At the time the invention was made, one would have been motivated to combine the teachings of Mold/Nestler with those of Morrison.

One would have been motivated to do this in order to assist sight impaired individuals, or to audibly play information selectively/or for each item for convenience of the user/verification.

Response to Arguments

8. Applicant's arguments filed 6-28-06 have been fully considered but they are not persuasive.

In response to the Applicants argument that Nestler fails to teach a removable container housing the point of purchase product, the Examiner disagrees. It is believed that FIG. 2b shows the container that is removable (from an inserted position).

In response to the Applicants argument that Collins does not teach a video monitor generating a prompt to purchase items including the point of purchase product, the Examiner

disagrees. The Examiner has interpreted the display means of Collins to be conventional in terms of displaying product and price information, and to facilitate a transaction (including credit card). Accordingly, as conventional credit card transactions involve the displaying of the products to be purchased for verification to the user (the products scanned in or otherwise entered into the system as conventional in the art) it would have been obvious to one of ordinary skill in the art that all products, including the point of purchase ones, would be displayed as part of the checkout process, and therefore a prompt is interpreted to be generated to prompt the purchase of all items (including those dispensed) as part of the completion of the transaction.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/930,968

Art Unit: 2876

Page 15

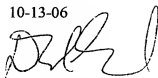
D. Walsh

Daniel I Walsh

Examiner

Art Unit 2876

10-13-06

A handwritten signature in black ink, appearing to read 'D. Walsh', with a stylized flourish at the end.

DANIEL WALSH
PRIMARY EXAMINER



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/930,968	08/31/2004	Steven P. Barton	112703-340	7502

7590 07/26/2006
Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, IL 60690-1135

EXAMINER	
WALSH, DANIEL I	
ART UNIT	PAPER NUMBER

2876

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
BELL, BOYD & LLOYD
INTELLECTUAL PROPERTY DOCKET
JUL 31 2006
ATTY kmblwc
DOCKET # 112703-340

Advisory Action **Before the Filing of an Appeal Brief**

Application No.

10/930,968

Applicant(s)

BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

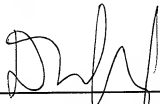
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-526).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 21-33 and 39-55.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 4-06
13. ☒ Other: see below.



The Examiner notes that the newly added limitation (re claims 21, 25, 26, 51, 52) that the removable container houses a stock of point of purchase products has not been entered because it raises new issues that require further search/consideration, because the Examiner did not consider the container storing stock of the products, but instead that a product was in a container that were in the dispensing device, such as cigarettes in a pack/container, placed in the device that would be dispensed to a user, where the packaging is interpreted as a removable container as it is dispensed. Re claim 39 that was not amended, the Examiner notes that the prior art is interpreted to read upon the claim, because the removable container is interpreted as discussed above. Re claims 43-44, the Examiner notes that the newly added limitations now placed in the body of the claim citing a products not displayed in a point of purchase rack, raise new issues for search/consideration, as they were not considered before as they were part of the preamble. Re amended claims 53, 54, and 55, the Examiner notes that the prior art is still believed to read upon the claims when the container is interpreted as discussed above.

Re the Applicants argument that Collins does not teach a prompt for purchasing, the Examiner notes that the prior art teaches a display that displays item information (price), which is interpreted as prompting purchase, as it is well known and conventional in the art that the display of total transaction price is interpreted as prompting purchase.

Re the Applicants argument that Nestler does not teach dispensing into a container, the Examiner notes Nestler teaches dispensing into a container that is removable from the housing (FIG. 2B).

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(Not for submission under 37 CFR 1.99)

Application Number	10930968
Filing Date	2004-08-31
First Named Inventor	Barton et al.
Art Unit	2876
Examiner Name	Unknown <i>Wab</i>
Attorney Docket Number	112703-340

U.S. PATENTS

Remove

Examiner Initial*	Cite No	Patent Number	Kind Code ¹	Issue Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
<i>DW</i>	1	4645036		1987-02-24	Nestler	
<i>[Handwritten mark]</i>	2	6193154		2001-02-27	Phillips et al.	
	3	5992570		1999-11-30	Walter et al.	
	4	6021362		2000-02-01	Maggard et al.	
	5	6116505		2000-09-12	Withrow	
	6	6356794		2002-03-12	Perin et al.	
<i>[Handwritten mark]</i>	7	6598790		2003-07-29	Horst	

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U.S. PATENT APPLICATION PUBLICATIONS

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)

Application Number	1093096a
Filing Date	2004-08-31
First Named Inventor	Barton et al.
Art Unit	2876
Examiner Name	unknown Walsh
Attorney Docket Number	112703-340

Examiner Initial*	Cite No	Publication Number	Kind Code ¹	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
AW	1	20020145037		2002-10-10	Goodwin	
L	2	20050128087		2005-06-16	Claessens et al.	

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FOREIGN PATENT DOCUMENTS

Examiner Initial*	Cite No	Foreign Document Number ³	Country Code ²	Kind Code ⁴	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear	T ⁵
	1							<input type="checkbox"/>

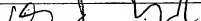
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NON-PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ⁵
me		International Search Report for International Patent Application No. PCT/US05/28545 that corresponds to the present application and of which the references cited above was cited therein. 02/2006	<input type="checkbox"/>

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EXAMINER SIGNATURE

Examiner Signature		Date Considered	7/2/06
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/930,968	08/31/2004	Steven P. Barton	112703-340	7502

7590 04/18/2006
Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, IL 60690-1135

EXAMINER

WALSH, DANIEL I

ART UNIT PAPER NUMBER

2876

DATE MAILED: 04/18/2006

Due: 7-18-06
no
References Downloaded *no*
no

Please find below and/or attached an Office communication concerning this application or proceeding.

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INTELLECTUAL PROPERTY DOCKET

APR 21 2006

ATTY

DOCKET #

Rmb-lwc
112703-
340

Office Action Summary

Application No.

10/930,968

Applicant(s)

BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 and 39-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-33 and 39-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-713)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Receipt is acknowledged of the Amendment received on 3 March 2006.

Claim Objections

2. Claims 21-24, 26, 30, 32, 39-42, 44, 48, 50, and 53 are objected to because of the following informalities:

Re claim 21: Replace "container housing point" with -- container housing a point -- and replace "cost of the product" with -- cost of the point of purchase product --.

Re claim 22: Replace "product" with -- point of purchase product --.

Re claim 23: Replace "product" with -- point of purchase product --.

Re claim 24: Replace "product" with -- point of purchase product -- and "products" with -- point of purchase products --.

Re claim 26: Replace "includes point of purchase" with -- includes a point of purchase product comprising a confectionary product --.

Re claim 30: Replace "product" with -- point of purchase product --.

Re claim 32: Replace "product" with -- point of purchase product --.

Re claim 39: Replace "product" with -- point of purchase product --.

Re claim 40: Replace "product" with -- point of purchase product --.

Re claim 41: Replace "product" with -- point of purchase product --.

Re claim 42: Replace "product" with -- point of purchase product -- and "products" with -- point of purchase products --.

Re claim 44: Replace "includes point of purchase product" with -- includes a point of purchase product comprising a confectionary product --.

Re claim 48: Replace ""product" with -- point of purchase product --.

Re claim 50: Replace ""product" with -- point of purchase product --.

Re claim 53: Replace "includes point of purchase product" with -- includes a point of purchase product comprising a confectionary product --.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 21-25 and 39-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold (US 5,978,772) in view of Nestler (US 4,645,036).

Mold teaches a scanner to scan items, a video monitor to display the cost of items, and a packaging area for placing scanned items into a container (FIG. 1). The Examiner notes that such limitations are conventional in the art for a checkout register.

Mold is silent to a dispenser for storing and dispensing a point of purchase product, the dispenser including a removable container housing a point of purchase product wherein the video monitor displays the cost of the product dispensed by the dispenser.

Nestler teaches a dispenser for dispensing a point of purchase product, including a removable container housing the point of purchase product (FIG. 1). Though silent to the video monitor displaying the cost of the product dispensed by the dispenser, the Examiner notes that it would have been obvious that such items be added to the total, and as such, the information regarding the cost of the item would be displayed so that the customer can see the item price/information, for example. The Examiner notes that Nestler teaches a display 22 for product information, but is silent to the cost being displayed. The Examiner notes that as discussed above, displaying of cost information is well known and conventional in the art to provide the user with purchase price information.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold with those of Nestler.

One would have been motivated to do this in order to have increased security for items.

Re claim 22, FIG. 2B (Nestler) teaches the product dispensed into the container. The Examiner has interpreted this container as the removable container, as two containers are disclosed in claim 1.

Re claims 23-24, the Examiner notes that Nestler teaches that the dispenser dispenses items next to the cash register (FIG. 2A). This is interpreted as next to the scanner/monitor/receipt printer, etc., which are part of the cash register/checkout. One would have been motivated to dispense next to the register/register devices in order to have the item readily accessible to the clerk for convenience.

Re claim 25, Mold/Nestler are silent to the product being confectionary and the cost is added to the cost of the items automatically. The Examiner notes that it would have been obvious for the product to be a confectionary product based on the desires or type of store, and that the cost be added to the cost of the items as part of the total items being purchased, to get a complete and accurate cost. The Examiner notes that the teachings of Mold illustrate a scanner for scanning items. The Examiner has interpreted the scanning of items to automatically add products (including confectionary products) to the cost, as is conventional in the art, for convenience/speed of the checkout.

Re claim 39, the limitations have been discussed above re claim 21. The Examiner has interpreted the dispenser as capable of dispensing all available point of purchase products. Additionally, the Examiner notes that the recitation that the dispenser dispenses all products available to the consumer is sufficiently broad to include those products disclosed by the prior art.

Re claim 40, the limitations have been discussed above re claim 22.

Re claim 41, the limitations have been discussed above re claim 23.

Re claim 42, the limitations have been discussed above re claim 24.

Re claim 43, the Examiner notes that the limitation "that eliminates..." has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-container description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). The teachings of *Mold/Nestler* are interpreted to read upon the claimed structure. Additionally, the Examiner notes that it is possible that the teachings above eliminate the need for racks or planagrams for displaying point of purchase products, as the products can be stored in the compartment of *Nestler*, for example.

Re claim 44, the Examiner notes that the limitation "that is not displayed in a rack..." has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-container description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). However, the Examiner notes that *Nestler* teaches products in compartments, interpreted as a body with interior, not a rack.

The teachings of *Mold/Nestler* have been discussed above (also see claim 26), including *Mold* teaching a scanning device to scan items for purchase, and *Nestler* teaching a body with interior for housing a container of a point of purchase product, a prompt, and dispenser as claimed (FIG. 1+ and 24, 25). Additionally, the Examiner has interpreted that a controller is coupled to the body (see FIG. 3 of *Nestler*), as the Examiner has interpreted the actuators to move products as part of controlling means/controllers. Additionally, as *Nestler* teaches special

codes or buttons of the checkout causing dispensing (col 8, lines 42+) and Mold has taught a checkout register including a scanning device, it would have been obvious for the checkout system/scanning device to communicate with and be coupled to the controller in order to process and complete transactions and dispensing of items. The items would be added together and totaled, as discussed above, and as is conventional in the art.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold with those of Nestler, for security.

Re claim 45, the limitations have been taught (see claim 27). The Examiner notes that the controller is interpreted as integral with the body as the body houses electronics, motors, and etc. that are used to dispense the items (FIG. 3+). This is interpreted as a controller integral with the body, as the controller is interpreted as the actual mechanical devices within the body that contribute to the dispensing of the product.

Re claim 46, the limitations have been taught (see claim 28). The Examiner notes that as the controller is responsive to inputs, it would have been obvious that it is coupled by one of electrical, optical, and RF, as such means (especially electrical) are well known and conventional in the art for communicating information in a transaction system reliably.

Re claim 47, the limitations have been taught (see claim 29). The Examiner notes that as the scanner is connected to the register, it would have been obvious to do so either electrically, optical, or radio as a well-known means for device connectivity. As Mold shows a wired scanner, it would have been well within the skill in the art for such a connection to be electric for reliability.

Re claim 48, the limitations have been taught (see claim 30). Nestler teaches dispensing downward (vertically) (FIG. 1+).

Re claim 49, the limitations have been taught (see claim 31). Re claim 31, it has been discussed above that the checkout/scanning device would be linked to the compartments to dispense items. Accordingly, as there are movers/actuators in the compartments themselves, prompted by the scanning device/checkout, it would have been obvious that the scanning device/checkout communicate with the actuators to dispense items. Therefore, it would have been obvious that such controlling means/controllers extend into the scanning device in order to communicate from the scanning device to the actual actuators/movers into the compartment when dispensing is necessary.

Re claim 50, the Examiner notes that Nestler teaches displays on panels 24 and 25 that also prompt consumers to purchase.

4. Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Collins, JR. (US 5,019,694).

The teachings of Mold/Nestler have been discussed above, including the teachings of a body, container, scanning device, dispenser, and confectionary product.

Re claim 26, the Examiner notes that the compartments of Nestler (FIG. 1) are interpreted as a body with an interior, and a controller is coupled to the body (see FIG. 3 of Nestler), as the Examiner has interpreted the actuators to move products as part of the controlling means/controllers. The Examiner has interpreted the checkout system of Mold as a scanning device. Accordingly, the checkout system would obviously communicate with and be coupled to the controller in order to process and compete transactions, especially as Nestler teaches that

special codes or buttons of the checkout cause the dispensing (col 8, lines 42+), which thereby would link the checkout system/scanning device to the controllers for actuation.

Mold/Nestler are silent to a touch screen prompt to encourage a consumer to purchase the point of purchase product.

Collins, Jr. teaches a video monitor (FIG. 4) generating a prompt to purchase items, interpreted as including the point of purchase product as the prompt is to encouraging purchase of all scanned items

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold/Nestler with those of Collins, Jr.

One would have been motivated to do this to provide a means for a customer to complete payment for the products while the cashier scans products, for example, to speed the checkout process.

Re claim 27, the Examiner notes that the controller is interpreted as integral with the body as the body houses electronics, motors, and etc. that are used to dispense the items (FIG. 3+). This is interpreted as a controller integral with the body, as the controller is interpreted as the actual mechanical devices within the body that contribute to the dispensing of the product. The controller in this interpretation would obviously be coupled to the checkout/scanning device as the checkout device causes the dispenser to dispense, based on inputs.

Re claim 28, the Examiner notes that as the controller is responsive to inputs, it would have been obvious that it is coupled by one of electrical, optical, and RF, as such means (especially electrical) are well known and conventional in the art for communicating information in a transaction system reliably.

Re claim 29, the Examiner notes that as the scanner is part of the checkout system to the register, it would have been obvious to do so either electrically, optical, or radio as a well-known means for device connectivity. As Mold shows a wired scanner, it would have been well within the skill in the art for such a connection to be electric, to have a reliable connection.

Re claim 30, Nestler teaches dispensing downward (vertically) (FIG. 1+).

Re claim 31, it has been discussed above that the checkout would be linked to the compartments to dispense items. Accordingly, as there are movers/actuators in the compartments themselves, it would have been obvious that the scanning device/checkout communicate with the actuators to dispense items. Therefore, it would have been obvious that such controlling means extended into the scanning device in order to communicate from the scanning device to the actual actuators/movers into the compartment when dispensing is necessary.

Re claim 32, the limitations have been discussed above, where displaying transaction information to compel the customer to scan their credit card to complete a transaction is interpreted a prompting purchase of products, including the product.

Re claim 33, the limitations have been discussed above where the products to be dispensed are placed in a container to be later received/entered into the point of purchase device/checkout.

5. Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Collins, JR. (US 5,019,694).

The teachings of Mold/Nestler have been discussed above.

Mold/Nestler are silent to the video monitor generating a prompt to prompt a purchase of a point of purchase product.

Collins, Jr. teaches a video monitor (FIG. 4) generating a prompt to purchase items, interpreted as including the point of purchase product.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold/Nester with those of Collins, Jr.

One would have been motivated to do this in order to provide convenience for the customer to complete the transaction.

Re claim 52, the limitations have been discussed above re claim 25, but Mold/Nestler are silent to the video monitor claimed displaying the cost of items and generating a prompt to purchase.

Collins, Jr. teaches such limitations above (displays 50,54), interpreted as displaying the costs and prompting purchase. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold/Nestler with those of Collins, Jr. for convenience of the shopper.

Re claim 53, the limitations have been discussed above re claim 26. The Examiner notes that though silent to a display for displaying the cost of the items, the Examiner notes that the displays 50/54 of Collins, Jr. display the total amount due and include lead through instructions to prompt the user to complete the transaction. It would have been obvious to display the items and prompt the user to purchase, as a means to provide guidance to a user to complete a transaction.

6. Claims 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler/Collins, Jr., as discussed above, in view of Morrison (US 6,105,866).

The teachings of Mold/Nestler/Collins, Jr. have been discussed above, re claim 26.

Mold/Nestler/Collins, Jr. are silent to an audio prompt to encourage purchase.

Morrison teaches such an audio prompt (col 4, lines 46+).

At the time the invention was made, one would have been motivated to combine the teachings of Mold/Nestler/Collins, Jr. with those of Morrison.

One would have been motivated to do this in order to assist sight impaired individuals, or to audibly play information selectively/or for each item for convenience of the user/verification.

7. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Morrison.

The teachings of Mold/Nestler have been discussed above, re claim 25.

Mold/Nestler are silent to the audible means as claimed.

Morrison teaches such limitations, as discussed above.

At the time the invention was made, one would have been motivated to combine the teachings of Mold/Nestler with those of Morrison.

One would have been motivated to do this in order to assist sight impaired individuals, or to audibly play information selectively/or for each item for convenience of the user/verification.

Response to Arguments

8. Applicant's arguments filed 3 March 2006 have been fully considered but they are not persuasive.

In response to the Applicants argument that Mold teaches an impulse rack (page 10 of Applicants arguments), the Examiner notes that Mold is not being relied upon for an impulse rack. As discussed above, Mold is being relied upon for a conventional checkout system. Nestler is being relied upon for a dispenser for storing and dispensing items. The Examiner maintains the motivation to combine a checkout system with the dispenser would be for increased security. Specifically, Nestler lists many advantages of the dispensing means to retailers, including security (see col 4, lines 35+). Nestler teaches that high volume, low profit, high pilferage items reduce money to the seller, and therefore security is desired. The Examiner notes that such security measure can obviously apply to different types of items to be purchased, as the concern is security. Further, the Examiner notes that confectionary items do not necessitate cheap items. The Examiner notes that many confectionary items, such as specialty/designer/rare chocolates can be quite expensive, though "expensive" is a term that varies person to person.

In response to the Applicants argument that figure 2B (page 11 of Applicants arguments) does not disclose dispensing the product into a container, the Examiner respectfully disagrees. FIG. 2B is not a side view, but shows the compartment unit 16 in a pulled down position, whereas FIG. 2A shows it in a recessed position.

Re the Applicants arguments regarding Phillips, the argument is now moot in view of the new grounds of rejection as discussed above, necessitated by the Applicants amendments. A touch screen prompt is well known and conventional in checkout systems for a user to complete a transaction (such as credit card).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Tewksbury (US 2003/0013094), Wike et al. (US 6,427,915), Fitch et al. (US 2003/0132918), Forsythe et al. (US 6,540,137), and Dejaeger et al. (US 6,456,981).
10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

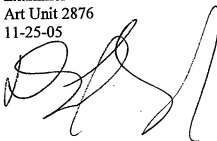
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel I Walsh
Examiner
Art Unit 2876
11-25-05

A handwritten signature in black ink, appearing to be 'D. Walsh', written over the printed name and date.

Notice of References Cited

Application/Control No.

10/930,968

Applicant(s)/Patent Under
Reexamination
BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2003/0113094	06-2003	Tewksbury, Bart C.	386/46
*	B	US-6,427,915	08-2002	Wike et al.	235/383
*	C	US-2003/0132918	07-2003	Fitch et al.	345/173
*	D	US-6,540,137	04-2003	Forsythe et al.	235/383
*	E	US-6,456,981	09-2002	Dejaeger et al.	705/14
*	F	US-5,019,694	05-1991	Collins, Jr., Donald A.	235/383
*	G	US-6,105,866	08-2000	Morrison et al.	235/383
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/930,968	08/31/2004	Steven P. Barton	112703-340	7502

7590 11/29/2005
Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, IL 60690-1135

EXAMINER

WALSH, DANIEL I

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 11/29/2005

Due: 2-28-06
no References Downloaded
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Office Action Summary

Application No.

10/930,968

Applicant(s)

BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5-05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

1. Receipt is acknowledged of the IDS received on 18 May 2005.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-20, drawn to an article dispenser, classified in class 221, subclass 1.
 - II. Claims 21-33, drawn to a checkout system, classified in class 235, subclass 378.
 - III. Claims 34-38, drawn to a method for funding placement of dispensers, classified in class 705 subclass 80.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a checkout device, as it can function as a dispenser alone. The subcombination has separate utility such as a checkout device.
4. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as a dispenser. See MPEP § 806.05(d).

5. Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as a checkout. See MPEP § 806.05(d).
6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
7. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
9. During a telephone conversation with Bob on Barrett a provisional election was made without traverse to prosecute the invention of a checkout system, claims 21-33. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-20 and 34-38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a request under 37 CFR

1.48(b) and by the fee required under 37 CFR 1.17(i).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 21-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-20 of copending Application No. 10/930,570.

This is a provisional obviousness-type double patenting rejection.

For instance, in claim 21 of the present Application, the Applicants claim: "A checkout device...scanner...video monitor...packaging area...dispenser..." (see claim 21), whereas in the '570 Patent Application the Applicants claim: "A checkout...scanner...video monitor...packaging area...dispenser..." (see claim 17). Though the '571 Patent Application is silent to the dispenser

having a removable container housing the point of purchase product, the Examiner notes that such modification is an obvious expedient as a means to hold a product that is to be dispensed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold (US 5,978,772) in view of Nestler (US 4,645,036).

Mold teaches a scanner to scan items, a video monitor to display the cost of items, a packaging area for placing scanned items into a container (FIG. 1). The Examiner notes that such limitations are conventional in the art for a checkout register.

Mold is silent to a dispenser for storing and dispensing a point of purchase product, the dispenser including a removable container housing a point of purchase product wherein the video monitor displays the cost of the product dispensed by the dispenser.

Nestler teaches a dispenser for dispensing a point of purchase product, including a removable container housing the point of purchase product (FIG. 1). Though silent to the video monitor displaying the cost of the product dispensed by the dispenser, the Examiner notes that it would have been obvious that such items be added to the total, and as such, the information regarding the cost of the item would be displayed so that the customer can see the item price/information, for example.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mold with those of Nestler.

One would have been motivated to do this in order to have increased security for items.

Re claim 22, FIG. 2B teaches the product into the container.

Re claims 23-24, the Examiner notes that Nestler teaches that the dispenser dispenses items next to the cash register (FIG. 2A. This is interpreted as next to the scanner/monitor/receipt printer, etc. which are part of the cash register/checkout. One would have been motivated to dispense next to the register/register devices in order to have the item readily accessible to the clerk, for convenience.

Re claim 25, the limitations have been discussed above.

13. Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mold/Nestler, as discussed above, in view of Phillips et al. (US 6,193,154).

The teachings of Mold/Nestler have been discussed above.

Re claim 25, Mold/Nestler are silent to the product being confectionary and the cost is automatically added to the cost of the items. The Examiner notes that it would have been obvious for the product to be a confectionary product based on the desires or type of store.

Phillips et al. teaches automatically adding prices (FIG. 7A) where Phillips et al. teaches that the cost of the soda is automatically added to the cost of the other items (gasoline) that is being purchased.

One would have been motivated to do this to speed up the process/add convenience.

Re claim 26, the Examiner notes that the scanner is interpreted as communicating/coupled to a controller, as it is part of the checkout system and is used to input information. Nestler teaches that special codes or buttons of the checkout cause the dispensing (col 8, lines 42+). Though silent to a controller the Examiner notes that it would have been obvious to one of ordinary skill in the art for the controller/processor of the checkout register to control the dispensing of the product, as a means of automatically controlling the dispensing. Additionally, Nestler teaches a prompt to encourage purchases through advertisements (col 3, lines 26+).

Re claim 27, the Examiner notes that the controller is interpreted as integral with the body as the body houses electronics, motors, and etc. that are used to dispense the items (FIG. 3+). This is interpreted as a controller integral with the body, as the controller is interpreted as the actual mechanical devices within the body that contribute to the dispensing of the product. The controller in this interpretation would obviously be coupled to the checkout/scanning device as the checkout device causes the dispenser to dispense, based on inputs.

Re claim 28, the Examiner notes that as the controller is responsive to inputs, it would have been obvious that it is coupled by one of electrical, optical, and RF, as such means (especially electrical) are well known and conventional in the art for communicating information in a transaction system

Re claim 29, the Examiner notes that as the scanner is connected to the register, it would have been obvious to do so either electrically, optical, or radio as a well-known means for device connectivity. As Mold shows a wired scanner, it would have been well within the skill in the art for such a connection to be electric.

Re claim 30, Nestler teaches dispensing downward (vertically) (FIG. 1+).

Re claim 31, the Examiner notes that the scanning device is integral with the controller where the controller is interpreted to be integral to the register/scanning device, as in conventional registers/checkout systems. Such an interpretation has been discussed above, where conventional checkouts include a controller/processor inside the scanning device/register to facilitate processing and completion of transactions.

Re claim 32, though Mold is silent to the display prompting the user to purchase the product, the Examiner notes that it is well known and conventional in the art for checkout registers to have displays that display total costs for a transaction, and also may include pads for users to input card or payment information. The Examiner has interpreted such conventional display of transaction totals and requesting/customer selection of payment as prompting the consumer to purchase the products/pay for the transaction.

Re claim 33, the limitations have been discussed above where the products to be dispensed are placed in a container to be later received/entered into the point of purchase device/checkout.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Daniel I Walsh
Examiner
Art Unit 2876
11-25-05





INFORMATION DISCLOSURE CITATION IN AN APPLICATION (Use several sheets if necessary)		Atty Docket No. 112703-340	Application No. 10/930,968
PTO Form 1449			
		Applicant Barton et al.	
		Filing Date August 31, 2004	Group 2876

U.S. PATENT DOCUMENTS

Examiner's Initials	Document Number	Publication Date	Inventor	Class	Subclass	Filing Date If Appropriate
DW	3,006,538	10/31/61	Deutsch			
	3,138,385	6/23/64	Giacobello			
	3,786,421	1/15/74	Wostl et al.			
	4,111,282	9/5/78	Vayda, Jr.			
	Re. 31,162	3/1/83	Bachmann et al.			
	4,614,384	9/30/86	Takano et al.			
	4,723,212	2/2/88	Mindrum et al.			
	4,833,308	5/23/89	Humble			
	5,173,851	12/22/92	Off et al.			
	5,261,564	11/16/93	Yelvington			
	5,586,686	12/24/96	Bustos et al.			
	5,612,868	3/18/97	Off et al.			
	5,725,124	3/10/98	Bustos et al.			
	5,813,569	9/29/98	Cihanek			
	5,816,443	10/6/98	Bustos			
	5,823,386	10/20/98	Vandenberg			
	5,918,764	7/6/99	Bustos et al.			
	5,943,241	8/24/99	Nichols et al.			
	5,947,328	9/7/99	Kovens et al.			
	5,979,702	11/9/99	Hennessey et al.			
	6,021,362	2/1/00	Maggard et al.			
	6,038,492	3/14/00	Nichols et al.			
	6,079,592	6/27/00	Hennessey et al.			
	6,116,505	9/12/00	Withrow			
	6,119,099	9/12/00	Walker et al.			
	6,161,059	12/12/00	Tedesco et al.			
6,193,154	2/27/01	Phillips et al.				

FOREIGN PATENT DOCUMENTS

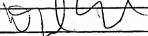
Examiner's Initials	Document Number	Publication Date	Country	Class	Subclass	Translation Yes No
DW	WO 96/06415	2/29/96	PCT			

Examiner: <i>[Signature]</i>	Date Considered: 11-16-05
*Examiner: Initial if citation considered, whether or not citation is in conformance with PEP Section 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	

INFORMATION DISCLOSURE CITATION IN AN APPLICATION (Use several sheets if necessary) PTO Form 1449	Atty Docket No.	Application No.
	112703-340	10/930,968
	Applicant	
	Barton et al.	
	Filing Date	Group
	August 31, 2004	2876

FOREIGN PATENT DOCUMENTS							
Examiner's Initials	Document Number	Publication Date	Country	Class	Subclass	Translation	
						Yes	No

Examiner's Initials	OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
	Optimal Robotics Corporation, "U-SCAN A Retail Revolution Is Upon Us," 2001.	

Examiner: 	Date Considered: 11-16-05
*Examiner: Initial if citation considered, whether or not citation is in conformance with PEP Section 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	

Notice of References Cited

Application/Control No.

10/930,968

Applicant(s)/Patent Under
Reexamination
BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,978,772	11-1999	Mold, Jeffrey W.	705/16
*	B	US-2002/0145037	10-2002	Goodwin, John C. III	235/383
*	C	US-4,645,036	02-1987	Nestler, Richard F.	186/55
	D	US-			
	E	US-			
	F	US-			
	G	US-			
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FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/930,570	08/31/2004	Steven P. Barton	112703-342	9435

7590 08/24/2006

Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, IL 60690-1135

EXAMINER

WALSH, DANIEL I

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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DOCKET # 112703-

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Supplemental
Notice of Allowability

Application No.

10/930,570

Examiner

Daniel I. Walsh

Applicant(s)

BARTON ET AL.

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8-15.
2. ☒ The allowed claim(s) is/are 1-11, 13-33 and 38-44.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or In the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 5-08
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 8-06.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

1. Receipt is acknowledged of the Amendment received on 3-3-06 and the IDS (2) received on 5-24-06.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bob Barrett on 15 August 2006.

The application has been amended as follows:

Re claim 10: Replace "in response to a signal from the display" with -- in response to a selection made through the display --.

Re claim 15: Replace "from the display" with -- through the display --.

Re claim 17: Replace "select a point of purchase product;" with -- select a point of purchase product through the video monitor; --.

Re claim 21: Replace "a cost for the items;" with -- a cost for the items and displaying the cost on a video monitor; --

Re claim 21: Replace "request of the consumer;" with -- request of the consumer made through the video monitor; --

Re claim 31: Replace "identifies an RFID tag" with -- identifies an RFID tagged item --

Re claim 31: Replace "for the items that include an RFID tag." with – of the RFID tagged items, whose cost is also displayed on the display. –

Cancel claims 34-37.

Re claim 38: Replace "information selected from the group consisting of the cost of the purchasable item, the cost of the point of purchase product, and combinations thereof" with – the cost of the purchasable item, --

Re claim 38: Replace "the purchase of the point of purchase product." with – the purchase of the point of purchase product, and the display device receiving a request from the consumer for the point of purchase product --.

Re claim 39: Replace "displays the cost of the purchasable item;" with – displays the cost of the purchasable item; requesting the point of purchase product through the video monitor; --

Re claim 40: Replace "dispenser using the video monitor" with – dispenser using the video monitor; requesting the point of purchase product through the video monitor; --

Re claim 42: Replace "the point of purchase product." with – the point of purchase product, a request for the point of purchase product being made through the monitor. –

Re claim 43: Replace "added to the cost of the items that have an RFID tag." with – added to the cost of the items that have an RFID tag, the consumer requesting the confectionary product through the monitor. –

Cancel claim 45

Allowable Subject Matter

3. Claims 1-11, 13-33 and 38-44 are allowed.

4. The following is an examiner's statement of reasons for allowance: The prior art of record fails to teach that the scanner, dispenser, and controller are part of a single integral device, and that the point of purchase product is dispensed in response to a consumer selection/signal through a monitor/display that also displays the cost of a purchasable item.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goodwin, III (US 2002/0139617) which teaches RFID scanner; Phillips et al. (US 6,193,154) which teaches dispensing of a soda at a fuel station, Chirnomas (US 2005/0211720) which teaches a touch screen replacing buttons, Schumacher et al. (US 6,213,394) which teaches graphics on a vending machine, Thompson et al. (US 5,785,204) which teaches displaying promotional messages, jingles, sounds, etc., and Bustos (US 6,164,491, 5,918,764, 5,816,443, 5,725,124, 5,586,686) which teaches a dispenser near a checkout or at a gas pump.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

Application/Control Number: 10/930,570
Art Unit: 2876

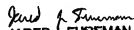
Page 5
D. Walsh

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel I Walsh
Examiner
Art Unit 2876
8-16-06




JARED J. FUREMAN
PRIMARY EXAMINER

Interview Summary

Application No.

10/930,570

Applicant(s)

BARTON ET AL.

Examiner

Daniel I. Walsh

Art Unit

2876

All participants (applicant, applicant's representative, PTO personnel):

(1) Daniel I. Walsh.

(3) _____

(2) Bob Barrett.

(4) _____

Date of Interview: 15 August 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____

Claim(s) discussed: 10 and 34-37.

Identification of prior art discussed: _____

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Mr. Barrett agreed to make changes to claim 10 (see Examiners Amendment attached) and to cancel claims 34-37.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135, (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(Not for submission under 37 CFR 1.99)

Application Number	10930570
Filing Date	2004-08-31
First Named Inventor	Steven P. Barton et al.
Art Unit	2876
Examiner Name	Daniel I. Walsh
Attorney Docket Number	112703-342

U.S. PATENTS

Remove

Examiner Initial*	Cite No	Patent Number	Kind Code ¹	Issue Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
EW	1	4645036		1987-02-24	Nestler	
	2	6193154		2001-02-27	Phillips et al.	
	3	5992570		1999-11-30	Walter et al.	
	4	6021362		2000-02-01	Maggard et al.	
	5	6116505		2000-09-12	Withrow	
	6	6356794		2002-03-12	Perin et al.	
	7	6598790		2003-07-29	Horst	
	8	5978772		1999-11-02	Mold	

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(Not for submission under 37 CFR 1.99)

Application Number		10930570
Filing Date		2004-08-31
First Named Inventor	Steven P. Barton et al.	
Art Unit	2876	
Examiner Name	Daniel I. Walsh	
Attorney Docket Number	112703-342	

<i>de</i>	9	5019694		1991-05-28	Collins, Jr.	
	10	6105866		2000-08-22	Morrison et al.	
	11	6550582		2003-04-22	Addy et al.	
	12	6189790		2001-02-20	Walter	
	13	6456981		2002-09-24	Dejaeger et al.	
	14	6427915		2002-08-06	Wike et al.	
<i>J</i>	15	6540137		2003-04-01	Forsythe et al.	

If you wish to add additional U.S. Patent citation information please click the Add button.

Add



U.S. PATENT APPLICATION PUBLICATIONS

Remove

Examiner Initial*	Cite No	Publication Number	Kind Code ¹	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
<i>de</i>	1	20020145037		2002-10-10	Goodwin	
<i>J</i>	2	20050128087		2005-06-16	Claessens et al.	

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)

Application Number	10930570
Filing Date	2004-08-31
First Named Inventor	Steven P. Barton et al.
Art Unit	2876
Examiner Name	Daniel I. Welsh
Attorney Docket Number	112703-342

	3	20030132918		2003-07-17	Fitch et al.	
	4	20030113094		2003-06-19	Tewksbury	


If you wish to add additional U.S. Published Application citation information please click the Add button

FOREIGN PATENT DOCUMENTS

Examiner Initial*	Cite No	Foreign Document Number ³	Country Code ²	Kind Code ⁴	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear	T ⁵
	1							<input type="checkbox"/>

If you wish to add additional Foreign Patent Document citation information please click the Add button

NON-PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T ⁵
		International Search Report for International Patent Application No. PCT/US05/28545 that corresponds to the present application and of which the references cited above as cited therein.	<input type="checkbox"/>

If you wish to add additional non-patent literature document citation information please click the Add button

EXAMINER SIGNATURE

Examiner Signature  Date Considered 5-30-06

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. ² Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). ³ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁴ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁵ Applicant is to place a check mark here if English language translation is attached.

Notice of References Cited	Application/Control No. 10/930,570	Applicant(s)/Patent Under Reexamination BARTON ET AL.	
	Examiner Daniel I. Walsh	Art Unit 2876	Page 1 of <u>1</u>

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2002/0139617	10-2002	Goodwin, John C. III	186/61
*	B	US-6,193,154	02-2001	Phillips et al.	235/381
*	C	US-2005/0211720	09-2005	Chimomas, Munroe	221/092
*	D	US-6,213,394	04-2001	Schumacher et al.	235/383
*	E	US-5,785,204	07-1998	Thompson et al.	221/24
*	F	US-6,164,491	12-2000	Bustos et al.	221/211
*	G	US-5,918,764	07-1999	Bustos et al.	221/211
*	H	US-5,816,443	10-1998	Bustos, Rafael T.	221/211
*	I	US-5,725,124	03-1998	Bustos et al.	221/211
*	J	US-5,585,686	12-1996	Bustos et al.	221/211
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/930,570	08/31/2004	Steven P. Barton	112703-342	9435

7590

12/01/2005

Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, IL 60690-1135

EXAMINER

WALSH, DANIEL I

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 12/01/2005

Due: 3/1-06
NO References Downloaded
NO

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
BELL, BOYD & LLOYD
INTELLECTUAL PROPERTY DOCKET

DEC 06 2005

ATTY *hnb-*

DOCKET # *112703-*

342

Office Action Summary

Application No.

10/930,570

Applicant(s)

BARTON ET AL

Examiner

Daniel I. Walsh

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5-05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Receipt is acknowledged of the IDS received on 18 May 2005.

Claim Objections

2. Claim 21 is objected to because of the following informalities:

Re claim 21, replace "the container" with -- a container --.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 3-15, 17-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin, III (US 2002/0145037) in view of Nestler (US 4,645,036)

Re claim 1, Goodwin, III teaches a purchasable item having an RFID tag affixed thereto, a scanner for detecting the RFID tag (FIG. 1/2, which teaches a checkout counter that has an RFID reader and barcode reader). Though silent to a controller in operative communication with the scanner for calculating the total cost of a purchase, the Examiner notes that it is well known and conventional in the art for checkout registers/counters to have a controller/processor in communication with the scanner for calculating/determining cost of items as part of the process of check-out, where totals for items would be calculated and purchased by a customer. Goodwin, III teaches control circuitry. It is obvious that controller/processors would be included; to facilitate a transaction as is known in the art.

Goodwin, III is silent to a dispenser proximate the scanner for dispensing a point of purchase product.

Nestler teaches a product dispenser for dispensing products proximate a register (FIG. 1)

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Goodwin, III with those of Nestler.

One would have been motivated to do this for increased store security.

Re claims 2-3, an RFID scanner/interrogator has been discussed above. The Examiner has interpreted an RFID interrogator to be synonymous with an RFID reader device.

Re claim 4, as the scanner is shown in a checkout environment, it would have been obvious that it be selected from the group of a stationary, moveable, and hand held scanner, as

such are conventional and convenient means to facilitate scanning, and their selection is based on cost, convenience, size/design constraints, etc.

Re claim 5, the Examiner notes that the product is chosen by the purchaser and dispensed by the cashier, and therefore it is interpreted that the dispensing is responsive to the selection of the user. The Examiner additionally notes that "user" is sufficiently broad and appears to read upon either the cashier or the customer selection. The Examiner notes therefore it is reasonable that both the cashier and customer can be interpreted as having a product dispensed responsive to a user selection.

Re claim 6, though the prior art is silent to a display device in operative communication with the controller for displaying information selected from the group consisting of the cost of the purchasable item, the cost of the point of purchase product, and combinations thereof, the Examiner notes that it is well known and conventional in the art for display devices to be in communication with the controller for displaying information relating to the costs of the items scanned. It would have been obvious to do so in order to provide information to the customer to facilitate completion of the transaction and to verify items/costs.

Re claim 7, it has been discussed above that display devices for facilitating payment by a customer are well known and conventional in the art, at checkouts/registers where a customer swipes a card (credit/debit) and follows directions to pay for/complete a purchase. It would have been obvious to use such a display, in order to facilitate customer completion of a transaction. As the display device includes directions for completion of payment, this is broadly interpreted as encouraging purchase of the products, which includes the point of purchase products.

Re claim 8, the Examiner notes that plastic/paper bags are well known and conventional in the art to store the items detected by the scanner, to ease the transportation of such items by the customer. Therefore, the use of bags is an obvious expedient.

Re claim 9, though Nestler is silent to dispensing the product into the container, the Examiner notes that if a container is placed in front of the chute (14) in a similar means as how bags are placed in front of opening 56 (FIG. 1 of Applicants Application), the goods will be dispensed into the bag. One would be motivated to do catch the items being dispensed.

Re claim 10, the limitations have been discussed above re claim 1.

Re claim 11, the limitations have been discussed above re claim 5.

Re claim 12, the limitations have been discussed above re claim 6. Re claims 12-13, the Examiner notes that Nestler (col 3, lines 50+) teaches advertising the products. Though silent to a cost, the Examiner notes that such displays are interpreted as a display device to prompt a user to purchase the goods. Simply displaying the price of the item would have been an obvious expedient in order to convey pricing information. Additionally, re claim 13, The Examiner notes that the limitations have also already been discussed above re claim 7 which reference a display device (electronic) to facilitate a transaction.

Re claim 14, the limitations have been discussed above re claim 9.

Re claim 15, the limitations have been discussed above re claim 1. A consumer selects an item that is offered for purchase, and the item is dispensed.

Re claim 17, the limitations have been discussed above re claim 6. Additionally, the Examiner notes it would have been obvious to have a packaging area to place the items into containers/bags, as such an area is well known and conventional in checkout/registers to

facilitate completion of a sale and subsequent bagging of the items for the customer to remove from the store.

Re claim 18, the limitations have been discussed above re claim 9.

Re claim 19, as the items are showed dispensed to the cashier, they are interpreted as adjacent the scanner, which is part of the scanner/checkout.

Re claim 20, though the prior art is silent to dispensing adjacent a video monitor, change maker, and receipt printer, the Examiner notes that the dispensing occurs adjacent the register/scanner device. Therefore, this is broadly interpreted as adjacent a receipt printer/printer/change maker, as such are well known and conventional components of a register/checkout. The Examiner notes that it would be obvious to dispense next to the register/scanner for convenience of the customer and the operator.

Re claim 22, the teachings of Goodwin, III/Nestler have been discussed above. It is obvious to use a controller/processor in order to purchase/scan/ring up items for purchase, as is conventional in the art, including RFID tagged items. Though Goodwin, III is silent to a body having an interior, coupled to the controller for dispensing items requested by the consumer, Nestler teaches a body having an interior that dispenses a product from the body upon a request from the product by the consumer (FIG. 1). It would have been obvious to couple this to a controller to electronically control the dispensing (as per selection), so that there is control over dispensing. The Examiner notes that such a controller could be within the checkout device itself, located within the body, etc. Nestler teaches a controller through the controlling means in the body (FIG. 3+), but also teaches that buttons pressed on the console 20 result in dispensing of the goods. Therefore, it would have been obvious to interpret processing means, such as are

conventional with a scanner/console to alternatively read on a controller couple and communicating with the boy and device. Though silent to a confectionary product, the Examiner notes that it would have been obvious to dispense different types of products, including confectionary ones, based on the needs of the store. As the prior art is drawn to a checkout system, it is obvious that the total cost of the purchase includes scanned and dispensed items, which make up the whole amount of items to be purchased by the consumer. Nestler teaches a prompt to encourage a consumer to purchase the confectionary product through advertising (col 3, lines 50+). Additionally, the Examiner notes that point of sale transaction devices (credit card readers, displays, signature pads, portable displays, etc) provide information regarding the transaction, including payment selection means, total, etc. It would have been obvious to have such a transaction device at a point of sale/register to facilitate payment and providing information to the user. Such means are interpreted as a prompt to encourage purchase/payment for all goods, including the confectionary good.

Re claim 23, as discussed above, the Examiner believes that the claim language regarding the controller is sufficiently vague. In one interpretation the Examiner notes that the body houses electronics, motors, etc. that are used to dispense the items (see Nestler). This is interpreted as a controller integral with the body, as the controller is interpreted as the actually mechanical devices within the body that dispense the product. The controller is indeed in this interpretation coupled to the device (checkout) as inputs at the device cause the dispenser to dispense.

Re claim 24 the controller is coupled to the body as claimed via (col 8, lines 60+ of Nestler. In this interpretation, the Examiner has interpreted the controller to be part of the checkout/register as is conventional in the art for carrying out purchase transactions.

Re claim 25, Nestler teaches that conventional electrical coupling is used to connect the console (interpreted as the checkout/scanning device) and dispenser/controller (col 8, lines 60+). In this interpretation, the Examiner has interpreted the controller to be part of the console/register as is conventional in the art. In such an interpretation, it would have been obvious that the scanning device is electrically coupled to the controller to facilitate the scanning device communicating with the controller for price and transaction information.

Re claim 26, Nestler teaches the claimed dispensing (FIG. 1+).

Re claim 27, the Examiner notes that the scanning device is integral with the controller where the controller is interpreted to be integral to the register/scanning device, as in conventional registers/checkout systems. Such an interpretation has been discussed above, where conventional checkouts include a controller/processor inside the scanning device/register to facilitate processing and completion of transactions.

Re claim 28, the teachings of Nestler have been discussed above regarding a display to encourage purchases (col 3, lines 50+). Additionally, it has been discussed above that electronic displays to facilitate completion of a transaction are well known and conventional in the art (such as signature pads, card scanners, etc. provided to the customer, for example, at a register to complete a transaction). As such displays are used to finish the transaction (credit/debit for example) the Examiner notes that such displays are interpreted as prompts that prompt the consumer to purchase the product (complete the transaction).

Re claims 29-30, Nestler et al. teaches various products are stored. It would have been obvious to stored different types of confectionary products/chewing gum in order to accommodate the needs of the store.

Re claim 31, the teachings have been discussed above. A controller has been discussed above as facilitating the dispensing of the item, and as such is coupled to the body. The Examiner has interpreted the signal is initiated by the consumer, as the consumer requests a product from storage. Though the operator presses a button/enters a code to actually dispense the product, the signal is initiated by a request from the consumer, and such a limitation is reasonable given the sufficiently broad claim language regarding the signaling.

Re claim 32, Nestler shows the body is modular and independent (FIG. 1+).

Re claim 33, a display has been discussed above as an obvious expedient for facilitating completion of a transaction by the consumer (payment via credit/debit for example). As controllers are typically part of the register, it would have been obvious that the display communicates with the controller to obtain final pricing information for the transaction, as is conventional in the art.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin, III/Nestler, as discussed above, in view of Claessens et al. (US 2005/0128087).

The teachings of Goodwin, III/Nestler have been discussed above.

Goodwin, III teaches that the RFID contains information that is used to obtain pricing information and therefore is silent to the RFID tag itself containing such information.

The Examiner notes that it is well known in the art that such information can be programmed directly onto the tag, so that information does not need to be fetched. Specifically,

Claessens et al. teaches that the RFID tag can be encoded with a code that either stores the price directly, or can be used to fetch such information remotely (paragraph [0003]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Goodwin, III/Nestler with those of Claessens et al.

One would have been motivated to do this in order to fetch price/related information directly from the tag, without requiring interfacing with a host/table for information (efficiency, reduction of parts, reduction in cost, etc.).

5. Claims 7, 13, 16, 21, 22, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin, III, as discussed above, in view of Phillips et al. (US 6,193,154).

Goodwin, III is silent to a display device prompting/prompting to encourage purchase of the point of purchase product/selecting the point of purchase product. Re claim 16, Nestler teaches a display device to select the product by the consumer, operatively connected to the checkout device (col 3, lines 50+ which teaches advertising that is part of the dispenser and as such is operatively connected to the checkout device). The phrase "operatively connected" is interpreted by the Examiner as sufficiently vague. The operation of the advertisements is to advertise. As being connected/attached the dispenser they are indeed operative, so the Examiner maintains they are operatively connected, as the claims do not recite the display device is electrically connected, for example.

Phillips et al. teaches (FIG. 7A), prompting a customer to buy a point of purchase product as a means to encourage additional sales from a customer. Phillips teaches that the display is operatively connected to the checkout/purchasing device so as to facilitate communication and updating of the price information.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Goodwin, III with those of Phillips et al.

One would have been motivated to do this to encourage additional purchasing of items for increased revenue, for example.

Re claims 21 and 34-37, the teachings of Goodwin, III/Nestler have been discussed above.

Goodwin, III/Nestler are silent to the cost of the product automatically added to the cost of the items.

Phillips et al. teaches such limitations (FIG. 7A) where Phillips et al. teaches that the cost of the soda is automatically added to the cost of the other items (gasoline) that is being purchased.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to do this in order to automatically update pricing information.

As the teachings of Nestler teach inputting a code/numbers/pressing a button on the console, and also controlling inventory based on items dispensed, it would have been obvious to incorporate pricing information when pressing the buttons for item dispensing, in order to automatically add the price of the item dispensed in addition to inventory tracking. As inventory updating and tracking is taught upon dispensing of items, additional automation such as updating price information would have been an obvious expedient for convenience and updating of information.

Re claims 35-37 the limitations have been discussed above. It would have even obvious for the scanner to be part of a cash register, as is conventional in the art, for scanning items to be purchased.

Additional Remarks

6. The Examiner notes that the preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951) (re claims 22 and 31 for example).

Conclusion

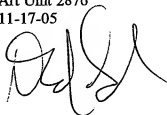
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Persky et al. (US 2004/0220860), Silverbrook et al. (US 2004/0195334), Acosta et al. (US 2004/0189472), Persky (US 2004/0069848), Acosta et al. (US 2003/0146280), Bellis et al. (US 2003/0024982), Goodwin (US 6,547,040), Ramachandran et al. (US 6,722,473), Horst (US 6,598,790), Perin et al. (US 6,356,794), Withrow (US 6,116,505), Maggard et al. (US 6,021,362), and Walter et al. (US 5,992,570).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel I Walsh
Examiner
Art Unit 2876
11-17-05

A handwritten signature in black ink, appearing to read 'D. Walsh', is written over the typed name and date.

INFORMATION DISCLOSURE CITATION ON AN APPLICATION (Use several sheets if necessary) MAY 18 2005 PATENT & TRADEMARK OFFICE	Atty Docket No. 112703-342	Application No. 10/930,570
	Applicant Barton et al.	
	Filing Date August 31, 2004	Group 2876
	PTO Form 1449	

U.S. PATENT DOCUMENTS						
Examiner's Initials	Document Number	Publication Date	Inventor	Class	Subclass	Filing Date If Appropriate
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	3,786,421	1/15/74	Wostl et al.			
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6,116,505	9/12/00	Withrow				
6,119,099	9/12/00	Walker et al.				
6,161,059	12/12/00	Tedesco et al.				
6,193,154	2/27/01	Phillips et al.				

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Examiner's Initials	Document Number	Publication Date	Country	Class	Subclass	Translation Yes No
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Examiner: <i>DW</i>	Date Considered: 11-16-05
*Examiner: Initial if citation considered, whether or not citation is in conformance with PEP Section 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	



**INFORMATION DISCLOSURE CITATION
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PTO Form 1449

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Applicant Barton et al.	
Filing Date August 31, 2004	Group 2876

FOREIGN PATENT DOCUMENTS

Examiner's Initials	Document Number	Publication Date	Country	Class	Subclass	Translation	
						Yes	No

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

Examiner's Initials	
	Optimal Robotics Corporation, "U-SCAN A Retail Revolution Is Upon Us," 2001.

Examiner:

[Handwritten Signature]

Date Considered:

11-16-05

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Notice of References Cited

Application/Control No.
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BARTON ET AL.

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Art Unit
2876

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*	B	US-2004/0195334	10-2004	Silverbrook et al.	235/482.14
*	C	US-2004/0189472	09-2004 20	Acosta et al.	340/572.3
*	D	US-2004/0069848	04-2004 15	Persky, Michael	235/383
*	E	US-2003/0146280	08-2003 7	Acosta et al.	235/454
*	F	US-2003/0024982	02-2003 6	Bellis et al.	235/383
*	G	US-2002/0145037	10-2002 10	Goodwin, John C. III	235/383
*	H	US-6,722,473	04-2004 28	Ramachandran et al.	186/36
*	I	US-6,598,790	07-2003 29	Horst, Douglas B.	235/383
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*	K	US-6,356,794	03-2002 12	Perin et al.	700/78
*	L	US-6,193,154	02-2001 7	Phillips et al.	235/381
*	M	US-6,116,505	09-2000 20	Withrow, Benjamin S.	235/381

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2876

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*	A	US-6,021,362	02-2000 /	Maggard et al.	700/234
*	B	US-5,992,570	11-1999 30	Walter et al.	186/36
*	C	US-4,645,036	02-1987 24	Nestler, Richard F.	186/55
*	D	US-2005/0128087	06-2005 16	Claessens et al.	340/572.8
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	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

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